JC112
JUN 10 2005
U.S. PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

Stephen G. Perlman et al. Confirmation No. 2377

Application No. 09/818,175

Filed: March 26, 2001

For: **APPARATUS AND METHOD FOR SELECTING DATA**

Group Art Unit: 2173

Examiner: Shawn M. Becker

Date of Submission: June 8, 2005

APPEAL BRIEF

TO THE COMMISSIONER FOR PATENTS:

The Applicants appeal from the final rejections of claims 1-30 in the above-identified patent application. The Applicants respectfully submit that those claims are allowable and seek reversal of the rejections of those claims set forth in the Final Office Action mailed November 9, 2004.

A timely Notice of Appeal was filed on April 11, 2005. This brief is filed on or within two months of the filing of the Notice of Appeal. This brief is filed pursuant to 37 C.F.R. § 41.37 and includes a Claims Appendix listing of the claims under appeal.

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I. REAL PARTY IN INTEREST

The real party in interest is the assignee, Digeo, Inc.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1-30 are pending in the application. Claims 31-60 have been canceled. Claims 1-30, which are the subject of this appeal, have been twice rejected and stand finally rejected in an Office Action mailed November 9, 2004 (hereinafter "the Final Office Action"). The Applicants appeal from that rejection.

IV. STATUS OF AMENDMENTS

After-final amendments were filed March 5 and April 7, 2005. The March 5 amendment canceled claims 31-60, and the April 7 amendment corrected typographical errors in claims 4, 14, and 24. The Office entered the March 5 amendment, as indicated by an Advisory Action mailed March 16, 2005. The Office entered the April 7 amendment, as indicated by an Advisory Action mailed May 2, 2005. The attached Claims Appendix incorporates both the March 5 and April 7 amendments.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter relates to selecting a multimedia program within an entertainment system. By way of illustration and not limitation, the specification describes an entertainment system comprising a "television/computer display 105" and a "graphical user interface" for selecting from "available media content." (9:3-5)[1] The specification describes various techniques by which a user can select "multimedia programs/files," including by title. (9:16). One described embodiment employs "textual multi-word typing."

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[1] Citations to the specification are indicated by page and line numbers separated by a colon. For example, "9:3-5" refers to page 9, lines 3-5.

(16:3-5). In that embodiment, after a user enters a first word, the system automatically provides potential next words, from which the user can select. (16:3 – 17:2). In fact, the potential next words can be "provided in the content list 110 [shown in Figures 2-5] . . . ordered based on the probability that each word will be selected." (16:13-14). More specifically, that probability can be based on historical data from operation of the entertainment system (16:3 – 17:2), such as the frequency at which a program has been played (10:6-16).

For purposes of this appeal claim 1 is representative of the independent claims and reads as follows:

> A method for selecting a multimedia program within an entertainment system, comprising:
>
> detecting a first word of a multimedia program entered by a user with a character-entry device; and
>
> providing a potential list of second words for the multimedia program to said user, said potential list of second words selected based, at least in part, on how frequently a multimedia program whose name includes one of the second words has been played by the entertainment system.

The features of the dependent claims are generally described throughout the specification. None of the claims include means-plus-function or step-plus-function limitations under 35 U.S.C. § 112, ¶6.

VI. GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

Claims 1-30 stand rejected under 35 U.S.C. § 103, as being allegedly obvious over U.S. Patent No.6,564,213 ("Ortega") in view of U.S. Patent App. Pub. No. 2003/0014753 A1 ("Beach"). Ortega, assigned to Amazon.com, concerns an online merchant system and discloses a system for suggesting to a user "query autocompletion strings" for use in entering an online search. Thus, as shown in Ortega's Figure 2B (reproduced on the front page of the patent), when a user types "SONY" in a search field of a web page, the system will suggest "SONY VCR," "SONY TV," "SONY TRINITON," and "SONY HANDYCAM." Ortega's online merchant system suggests those query autocompletion strings based on the "popularity" of those items among a large number of consumers (Ortega at 2:14-17, 2:20-22, 2:43-46; 6:10-18, 6:27-36), and the Final Office Action contends that the "the number of times a program is played" is also "a measure of popularity" (Final Office Action at 4:5-7).

Because Ortega does not concern an entertainment system and does not contemplate playing a multimedia program, the Final Office Action turned to Beach for its disclosure a user interface for an interactive personal video recording system (i.e., TiVo®). A user of Beach's video recording system can search a database of program information in a variety of ways, such as by program title, program "attributes" (category, actor, director), or key words for program content or subject matter. (Beach ¶ 9; *see also* Fig. 2). The Final Office Action relies on Ortega's teaching of its query autocompletion strings and Beach's teaching of searching a program database in the context of an entertainment system to assert that the claims would have been obvious.

VII. ARGUMENTS

A. Ortega and Beach Alone or in Combination Do Not Teach Suggesting a Second Word Based on "How Frequently a Multimedia Program . . . Has Been Played by the Entertainment System."

A rejection based on prior art – whether grounded in anticipation or obviousness – must account for each and every claim limitation. *Celeritas Techs. Inc. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1360, 47 U.S.P.Q.2d 1516, 1522 (Fed. Cir. 1998) (anticipation); *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q.2d 494, 496 (CCPA 1970) (obviousness); MPEP § 2143.03 ("To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.") (emphasis added).

The rejection in this case does not properly account for the independent claims' limitation that the "potential list of second words [are] selected, at least in part, on how frequently a multimedia program . . . has been played by the entertainment system." More particularly, the rejection has wrongly equated "how frequently a multimedia program . . . has been played by the entertainment system" with Ortega's teaching of a broad-based "popularity" among many purchasers or potential purchasers using an online merchant system.

1. Ortega Does Not Disclose Suggesting a Second Word Based on "How Frequently a Multimedia Program . . . Has Been Played by the Entertainment System."

a. Ortega Does Not Disclose Playing a Multimedia Program.

Ortega's system *per se* does not suggest a second word based on "how frequently a multimedia program . . . has been played by the entertainment system." That is so for several reasons. First of all, as the Final Office Action acknowledges, Ortega's system is not an entertainment system. Rather, Ortega's system is an online merchant system for selling merchandise to consumers over the Internet. Moreover, while Ortega's system might be used to search for a multimedia program for purchase (Ortega 5:55-65), Ortega's system does not play a multimedia program.

b. Ortega's "Popularity" is Neither the Same as Nor Obviously Related to "How Frequently a Multimedia Program . . . Has Been Played by the Entertainment System."

More importantly, Ortega's query autocompletion feature suggests a second word in a query based upon a very different criteria. In particular, Ortega's system can assign to each query autocompletion string a "score." (*Id.* 5:66 – 6:3). A score represents an "estimated probability or prediction that the user is entering the corresponding string" and is based on either (a) the frequency with which users collectively have entered the term in a search query, (b) a sales or popularity rank associated with the term, or (c) the frequency of occurrence of the term in the database that is being searched. (*Id.* 6:27-36). Ortega's system can limit the suggested query autocompletion strings presented to the user based on their scores. (*Id.* 6:10-18).

However, none of Ortega's scoring criteria is the same as or similar to the claimed criteria. The Final Office Action states that "Ortega teaches basing the potential list of words on popularity, as described above, and the number of times a program is played in the method/system of Ortega and Beach is a measure of popularity." (Final Office Action at 4:5-7). The Applicants respectfully disagree with this assertion that the number of times a program has been played "by the entertainment system" is a measure of popularity, as that term is used by Ortega.

The differences between popularity and playback history can be better appreciated by studying Ortega in greater depth. Ortega's scoring techniques are particularly suited to the

server-based architecture of Ortega's system. In particular, Ortega's system is an online merchant system in which a server stores the databases (products database(s) 22 in Figure 4) that many different client users search. Thus, Ortega's server has a query log 76, from which an autocompletion database 22 can be built. Ortega repeatedly stresses the desirability of having the query autocompletion strings being based on data from a broad swath of different users:

> Because the autocompletion strings are not based solely on strings entered on the particular computing device, they tend to be helpful for entering both new and previously entered text strings. (Ortega at 2:14-17 (emphases added)).
>
> Another benefit, in certain embodiments, is that the suggested strings strongly reflect the browsing activities, and the item interests, of a population of users. (Ortega at 2:43-46 (emphasis added)).
>
> An important benefit of the FIG. 5 method is that the resulting datasets tend to reflect, and thus direct users to, the most popular items within the database. (Ortega at 8:20-22 (emphasis added)).

Thus, when Ortega refers to "popularity," he is referring to what many people like or have searched for in the past; he is not referring to any sort of historical preferences at one particular client. This accords with the online merchant application with which Ortega's system is concerned. Popularity of an item among a class of purchasers may be highly pertinent to an individual's decision to purchase the item.

Not necessarily so with an individual's decision to play a multimedia program at an entertainment system. Unlike multi-person broad-based popularity, history of playback of a multimedia program at a given entertainment system has a special significance to a user, as, for example, a person tends to enjoy listening to a song heard in the past, watching a movie enjoyed before, or watching a new episode of a favorite program. On the other hand, it would defy common sense for a user of Ortega's system to purchase the same book, music, or electronics device over and over again.

In summary, Ortega does not disclose the independent claims' limitation that the "potential list of second words [are] selected, at least in part, on how frequently a multimedia program . . . has been played by the entertainment system" and the Final Office Action has

misread Ortega when it equated Ortega's multi-user popularity-based scoring for merchandise with "how frequently a multimedia program . . . has been played by the entertainment system."

2. Beach Does Not Disclose Suggesting a Second Word Based on "How Frequently a Multimedia Program . . . Has Been Played by the Entertainment System."

Beach does not disclose the limitation that is lacking from Ortega. Beach discloses a user interface for a TiVo® video recording system. A user of Beach's video recording system can search a database of program information in a variety of ways, such as by program title, program "attributes" (category, actor, director), or key words for program content or subject matter. (Beach ¶ 9; *see also* Fig. 2). While Beach discloses simple prefix matching as a user enters a search query (Beach ¶ 9), Beach does not disclose a query autocompletion feature at all – let alone scoring as part of an autocompletion feature, and certainly not a scoring technique that is based on historical playback data. In other words, Beach does not cure the deficiency in Ortega's disclosure with respect to the subject matter of the Applicants' independent claims.[2]

3. The Combined Teachings of Ortega and Beach Together Do Not Suggest Suggesting a Second Word Based on "How Frequently a Multimedia Program . . . Has Been Played by the Entertainment System."

Because neither Ortega nor Beach discloses, teaches, or in any way suggests one of the claim limitations, no conceivable combination of their disclosures can possibly teach or suggest that claim limitation. For that reason, the rejections of claims 1, 11, and 21 is improper and should be reversed.

To elaborate further, consider how one of ordinary skill in the art ("OOSITA") at the time of the invention would have viewed the two references together.[3] OOSITA might have

[2] After all, Beach was cited in the Final Office Action as simply teaching a different context or application (personal video recording system) because Ortega's context or application (online merchant system) differs from the "entertainment system" claimed by the Applicants. The Final Office Action does not rely on Beach for any particular teaching of its user interface.

[3] The analysis herein involves the concepts taught by the references (e.g., the autocompletion concept, the scoring concept) – not physically plugging elements of Ortega's system into Beach's system or *vice versa*, as the March 16, 2005 Advisory Action suggests.

been led (a) to apply Ortega's query autocompletion feature to search queries of a program database on a personal recording system. OOSITA might even have contemplated (b) "scoring" entries in the program database and utilizing scoring with the autocompletion feature. The Final Office Action takes another step, alleging that OOSITA would have (c) further utilized play back frequency as a scoring criteria. The Applicants respectfully submit that study of the references cast serious doubt on (b), and that (c) is wholly without merit.

The technical differences between Ortega and Beach make (b) more challenging than it would appear on first blush. As pointed out above, *see supra* 4, Ortega's system is server-based and the users' queries are directed to a database on a server. On the contrary, Beach's program database is at the client unit 3 (Fig. 1). If OOSITA were to contemplate applying Ortega's scoring techniques in a system like Beach's, OOSITA would be faced with the technical challenge of applying broad multi-user popularity-based and aggregated query log-based scoring criteria to a client database that is only searched locally at a client. The Final Office Action has ignored these details. Unless the Office can provide sufficient reasoning to adequately explain how OOSITA would have overcome this challenge – using nothing more than ordinary skill – without changing the principles of operation of the references and without rendering them unsatisfactory for their intended purposes, the rejection must be reversed. *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984); *In re Ratti*, 270 F.2d 810, 813, 123 U.S.P.Q. 349, 352 (C.C.P.A. 1959); MPEP § 2143.02.[4]

To the extent that the Final Office Action contends that OOSITA would disregard Ortega's teachings of multi-user popularity-based scoring (and its advantages repeatedly emphasized by Ortega) and instead contemplate performing scoring based on frequency of playback, then the Final Office Action has taken a leap far beyond the combined teachings of Ortega and Beach, as pointed above. When neither reference individually teaches a claim

[4] Should the Examiner contend that OOSITA would have found it obvious to utilize a local version of query log-based scoring to a personal recording system (i.e., suggesting autocompletion strings based on query history at the personal recording system only), the Examiner would have the burden to show that such a modification would result in the claimed invention, notwithstanding the fact that the frequency with which a program has been a subject of a search is not necessarily the same as the frequency with which it been played. Searched-for programs are not necessarily played, and programs can be selected for play in many ways other than by a search query (e.g., time/channel selection, TiVo's suggestions, or even manually changing the channel until you find something you like).

limitation and when the teachings of references considered jointly do not suggest the claim limitation, then the claim is not obvious over the references.

B. The Final Office Action's Motivation for Combining Ortega and Beach Has Been Derived From Impermissible Hindsight.

Because no combination of the teachings of the references yields the claimed invention, the Board need not even reach the question whether OOSITA would have been motivated to make the alleged combination. If the Board were to reach that question, it would find that the motivation stated in the Final Office Action is tainted by hindsight.

The Final Office Action states that the motivation for OOSITA to have made the alleged combination is efficiency. (Final Office Action 3-4 ("to quickly select/retrieve a desired program/show out of the many programs that are offered")). It is telling that the Final Office Action does not cite to either reference as teaching that motivation. While it is true that a motivation need not be found in the references themselves, the motivation must come from the prior art, as opposed to the Applicant's teachings. *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Indeed, where the references are silent as to motivation, the danger of hindsight is at its zenith. So it is here. To be sure, efficiency is taught by the Applicants themselves. (*See* 4:6-7 ("What is needed is a more efficient application and method . . ." (emphasis added)). In the absence of an independent source teaching this motivation in the prior art, it is clear that the Final Office Action has impermissibly relied on the Applicants' own teachings. That is reversible error. *See id.*.

For all of the foregoing reasons, the Applicants respectfully request reversal of the rejection of independent claims 1, 11, and 21. Because the independent claims are nonobvious, the rejection of the dependent claims must be reversed as well. *In re Fine*, 837 F.2d 1071, 1076, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988) ("Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.").

VIII. CONCLUSION

The Final Office Action has not made out a *prima facie* case of obviousness. The Board should therefore reverse the rejection of all claims.

Respectfully submitted,

Digeo, Inc.

Date: June 8, 2005

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Appendices: Claims Appendix
Evidence Appendix (blank)
Related Proceedings Appendix (blank)

CLAIMS APPENDIX

1. A method for selecting a multimedia program within an entertainment system, comprising:

detecting a first word of a multimedia program entered by a user with a character-entry device; and

providing a potential list of second words for the multimedia program to said user, said potential list of second words selected based, at least in part; on how frequently a multimedia program whose name includes one of the second words has been played by the entertainment system.

2. The method as in claim 1 further comprising:

ordering said potential list of second words based, at least in part, on the probability that each word in said potential list of second words will be selected by said user following said first word.

3. The method as in claim 1 further comprising:

detecting a second word of the multimedia program selected or entered by said user with a character-entry device; and

providing a potential list of third words of the multimedia program to said user, said potential list of third words selected based, at least in part, on how frequently a multimedia program whose name includes one of the third words has been played by the entertainment system.

4. The method as in claim 1 further comprising:

ordering said potential list of second words based, at least in part, on how frequently a multimedia program whose name includes one of the second words has been played by the entertainment system.

5. The method as in claim 3 wherein said second word is entered manually by said user using said character-entry device or selected by said user from said potential list of second words.

6. The method as in claim 3 further comprising:

recording selection of said second word following said first word in a database.

7. The method as in claim 6 wherein recording comprises:

linking said second word to said first word in said database.

8. The method as in claim 7 wherein recording further comprises:

storing a number of times said user has selected said second word following said first word.

9. The method as in claim 8 further comprising:

calculating a first probability that said second word will be selected by said user based, at least in part, on said number of times.

10. The method as in claim 9 further comprising:

calculating a second probability that said second word will be selected by said user by combining said first probability with a probability derived from how frequently a multimedia program whose name includes one of the second words is included in a database; and

selecting said potential list of second words based, at least in part, on said second probability.

11. A system for selecting a multimedia program, comprising:

detection logic to detect a first word of a multimedia program entered by a user with a character-entry device; and

list generation logic to provide a potential list of second words for the multimedia program to said user, said potential list of second words selected based, at least in part, on how frequently a multimedia program whose name includes one of the second words has been played by the user.

12. The method as in claim 11 further comprising:

ordering logic to order said potential list of second words based, at least in part, on the probability that each word in said potential list of second words will be selected by said user following said first word.

13. The system as in claim 11 further comprising:

second word detection logic to detect a second word of the multimedia program selected or entered by said user with a character-entry device; and

third word generation logic to provide a potential list of third words of the multimedia program to said user, said potential list of third words selected based, at least in part, on how frequently a multimedia program whose name includes one of the third words has been played by said user.

14. The system as in claim 11, further comprising:

ordering logic to order said potential list of second words based, at least in part, on how frequently a multimedia program whose name includes one of the second words has been played by the user.

15. The system as in claim 13 wherein said second word detection logic detects said second word entered manually by said user using said character-entry device or selected by said user from said potential list of second words.

16. The system as in claim 13 further comprising:

recording logic to record selection of said second word following said first word in a database.

17. The system as in claim 16 wherein recording logic further comprises:

linking logic to link said second word to said first word in said database.

18. The system as in claim 17 wherein said recording logic further comprises:

storage logic to store a number of times said user has selected said second word following said first word.

19. The system as in claim 18 further comprising:

calculation logic to calculate a first probability that said second word will be selected by said user based, at least in part, on said number of times.

20. The system as in claim 19 wherein said calculation logic is to calculate a second probability that said second word will be selected by said user by combining said first probability with a probability derived from how frequently a multimedia program whose name includes one of the second words is included in a database; and wherein said list generation logic is to provide said potential list of second words based, at least in part, on said second probability.

21. An article of manufacture including program code which, when executed by a machine, causes said machine to perform the operations of:

detecting a first word of a multimedia program entered by a user with a character-entry device;

providing a potential list of second words for the multimedia program to said user, said potential list of second words selected based, at least in part, on how frequently a multimedia program whose name includes one of the second words has been played by the machine.

22. The article of manufacture as in claim 21 comprising program code causing said machine to perform the additional operations of:

ordering said potential list of second words based, at least in part, on the probability that each word in said potential list of second words will be selected by said user following said first word.

23. The article of manufacture as in claim 21 comprising program code causing said machine to perform the additional operations of:

detecting a second word of the multimedia program selected or entered by said user with a character-entry device; and

providing a potential list of third words of the multimedia program to said user, said potential list of third words selected based, at least in part, on how frequently a multimedia program whose name includes one of the third words has been played by the machine.

24. The article of manufacture as in claim 21 comprising program code causing said machine to perform the additional operations of:

ordering said potential list of second words based, at least in part, on how frequently a multimedia program whose name includes one of the second words has been played by the machine.

25. The article of manufacture as in claim 23 wherein said second word is entered manually by said user using said character-entry device or selected by said user from said potential list of second words.

26. The article of manufacture as in claim 23 comprising program code causing said machine to perform the additional operations of:

recording selection of said second word following said first word in a database.

27. The article of manufacture as in claim 26 comprising program code causing said machine to perform the additional operations of:

linking said second word to said first word in said database.

28. The article of manufacture as in claim 27 comprising program code causing said machine to perform the additional operations of:

storing a number of times said user has selected said second word following said first word.

29. The article of manufacture as in claim 28 comprising program code causing said machine to perform the additional operations of:

calculating a first probability that said second word will be selected by said user based, at least in part, on said number of times.

30. The article of manufacture as in claim 29 comprising program code causing said machine to perform the additional operations of:

calculating a second probability that said second word will be selected by said user by combining said first probability with a probability derived from how frequently a multimedia program whose name includes one of the second words is included in a database; and

ordering said potential list of second words according to said second probability.

EVIDENCE APPENDIX

NONE.

RELATED PROCEEDINGS APPENDIX

NONE.

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PTO/SB/17 (12-04v2)
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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 500.00

Complete if Known	
Application Number	09/818,175
Filing Date	March 26, 2001
First Named Inventor	Stephen G. Perlman et al.
Examiner Name	Shawn M. Becker
Art Unit	2173
Attorney Docket No.	50588/328 US

METHOD OF PAYMENT (check all that apply)

☑ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☑ Deposit Account Deposit Account Number: 19-4455 Deposit Account Name: Stoel Rives LLP

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES Fee ($)	FILING FEES Small Entity Fee ($)	SEARCH FEES Fee ($)	SEARCH FEES Small Entity Fee ($)	EXAMINATION FEES Fee ($)	EXAMINATION FEES Small Entity Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims		Extra Claims	Fee ($)		Fee Paid ($)
30	- 20 or HP =	10	x 50	=	500

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims		Extra Claims	Fee ($)		Fee Paid ($)
3	- 3 or HP =	0	x 200	=	0

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims — Fee ($): _____ Fee Paid ($): _____

3. APPLICATION SIZE FEE

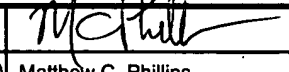
If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets		Extra Sheets		Number of each additional 50 or fraction thereof	Fee ($)		Fee Paid ($)
_____	- 100 =	_____	/ 50 =	_____ (round up to a whole number)	x _____	=	_____

4. OTHER FEE(S)

	Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)	
Other (e.g., late filing surcharge): Appeal Brief	$500

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 43,403	Telephone (503) 294-9851
Name (Print/Type)	Matthew C. Phillips		Date June 8, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Stephen G. Perlman et al.

Confirmation No. 2377

Application No. 09/818,175

Filed: March 26, 2001

For: **APPARATUS AND METHOD FOR SELECTING DATA**

Group Art Unit: 2173

Examiner: Shawn M. Becker

Date: June 8, 2005

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Date: June 8, 2005

Kim Wilson

TRANSMITTAL LETTER

TO THE COMMISSIONER FOR PATENTS:

Enclosed for filing in the above-referenced application are the following:

1. Appeal Brief
2. Fee Transmittal (in duplicate)
3. Check in the amount of $500.00
4. Return-receipt postcard

Respectfully submitted,

Digeo, Inc.

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